IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

Crl.MC.No. 3383 of 2007()

CC.1284/2005 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TIRUR

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PETITIONER:

SULMON MUNEER,S/O.O.S.MUNEER,AGED 27 YEARS,STUDENT,OOLIKKARA HOUSE,THOTTAKKATTUKARA, ALUVA VILLAGE,ALUVA TALUK,ERNAKULAM DISTRICT.

BY ADV. SRI.P.M.ZIRAJ

RESPONDENTS:

STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR,HONOURABLE HIGH COURT OF KERALA AT ERNAKULAM REPRESENTED BY SUB INSPECTOR OF POLICE, KUTTIPPURAM POLICE STATION.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 12/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C.No. 3383 of 2007

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Dated this the 12th day of November, 2007

ORDER

The petitioner faces indictment in a prosecution for offences punishable, inter alia, under Sections 452 and 323 IPC. Investigation is complete. Final report has already been filed. Cognizance has been taken as early as in 2005 as can be seen from the number of the Calender Case (C.C.No.1284/2005). Consequent to non-appearance of the petitioner, the learned Magistrate has now issued warrant of arrest against the petitioner. According to the petitioner he is absolutely innocent. His absence earlier was not wilful. He is willing to surrender before the learned Magistrate, but he apprehends that his application for bail may not be considered by the learned Magistrate, in accordance with law and expeditiously. He therefore prays that appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C. to save the petitioner from the undeserved trauma of arrest and incarceration, prays the learned counsel for the petitioner.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. The learned Magistrate must consider such application for bail on merits, in accordance with law and expeditiously. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1)

KLT 339].

4. This Crl.M.C. is, in these circumstances, dismissed, but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously-on the date of surrender itself.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE